Supreme Court, U.S.
FILED
DEC 28 1993
OFFICE OF THE CLERK

No. 93-756

In the

Supreme Court of the United States

October Term, 1993

MISSION OAKS MOBILE HOME PARK, a California General Partnership,

Petitioner,

v.

CITY OF HOLLISTER; HOLLISTER CITY COUNCIL; and HOLLISTER MOBILEHOME RENT COMMISSION,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

RONALD A. ZUMBRUN
* JAMES S. BURLING
VICTOR J. WOLSKI
*Counsel of Record
Pacific Legal Foundation
2700 Gateway Oaks Drive,
Suite 200
Sacramento, California 95833
Telephone: (916) 641-8888
Attorneys for Petitioner

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

INTRODUCTION 1

THE YOUNGER ABSTENTION REQUIREMENT THAT THE FEDERAL PLAINTIFF NOT BE THE PARTY THAT INITIATED THE STATE PROCEEDINGS WAS RAISED BELOW 2

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED SO THIS COURT CAN EXTEND THE REASONING OF ENGLAND BEYOND THE CONTEXT OF PULLMAN ABSTENTION 5

CONCLUSION 7

TABLE OF AUTHORITIES CITED

Page

Adickes v. S. H. Kress and Co., 398 U.S. 144 (1970) 4

England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964) 5,7

Fields v. Sarasota Manatee Airport Authority, 953 F.2d 1299 (11th Cir. 1992) 5-6

Growe v. Emison, 507 U.S. __, 122 L. Ed. 2d 388 (1993) 4

Nollan v. California Coastal Commission, 483 U.S. 825 (1987) 6

Palomar Mobilehome Park Association v. City of San Marcos, 989 F.2d 362 (9th Cir. 1993) 6-7

Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941) 5,7

Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985) 5-7

Yee v. City of Escondido, 503 U.S. ___, 118 L. Ed. 2d 153 (1992) 3

Younger v. Harris, 401 U.S. 37 (1971) 2-4,7

No. 93-756

In the

Supreme Court of the United States

October Term, 1993

MISSION OAKS MOBILE HOME PARK, a California General Partnership,

Petitioner,

v.

CITY OF HOLLISTER; HOLLISTER CITY COUNCIL; and HOLLISTER MOBILEHOME RENT COMMISSION,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

INTRODUCTION

Respondents City of Hollister, Hollister City Council, and Hollister Mobilehome Rent Commission (collectively, respondents or City) in their Brief in Opposition understandably tried to use to their advantage the procedural confusion that currently permeates litigation in defense of property rights.

However, this procedural confusion does not justify the City's incorrect assertion that one of the major issues in the case was not argued below. Respondents' Brief in Opposition (Opposition) at 15. At the same time, the City implies that issues that were decided against the City and were not appealed constitute grounds for denying the petition for writ of certiorari. Opposition at 14 n.15. These matters, and the confusion under which the City seeks solace, require a reply.

THE YOUNGER ABSTENTION REQUIREMENT THAT THE FEDERAL PLAINTIFF NOT BE THE PARTY THAT INITIATED THE STATE PROCEEDINGS *WAS* RAISED BELOW

It is the law that a federal plaintiff subject to *Younger* abstention, *see Younger v. Harris*, 401 U.S. 37 (1971), must have been the target and not the initiator of the state proceedings. The Ninth Circuit's departure from the decisions of this Court and of other circuits on the issue is so glaring that it cannot be countered. Perhaps this is why the City asserts that petitioner Mission Oaks Mobile Home Park (Mission Oaks) failed to raise the argument on appeal. Opposition at 15. The record will show that this assertion is wrong.

In Mission Oaks' opening brief filed in the Ninth Circuit, the following argument was made:

> Even before the court can determine whether each of three (3) elements set forth above is present, it should determine whether the federal court action falls within the type of cases subject to *Younger* Abstention. ... [T]he court's focus has never shifted from the policy

> of stopping a federal court from enjoining a state court's proceedings.
>
> ....
>
> *This is not a case in which a defendant in the state court becomes a plaintiff in the federal court seeking an injunction.*
>
> ....
>
> Thus, the policy underlying *Younger*, *Middlesex* and *Fresh Int'l Corp.* is absent here. Accordingly, this court need not go further in its analysis to determine that application of *Younger* Abstention in this instance was inappropriate.

Brief of Appellant (Appellant Brief) at 7-8 (emphasis added). Mission Oaks' reply brief in that court returned to this theme. *See* Reply Brief of Appellant (Reply Brief) at 4 ("[t]he doctrine is, in essence, a procedural device to preclude *a defendant* from 'hedging' against a potentially adverse ruling in state court. Those policies are not applicable here") (emphasis added).

In any event, even were the exact legal argument not made below, this Court could still entertain any arguments on the validity of *Younger* abstention under the circumstances of the case--as this was undeniably an issue below. *See Yee v. City of Escondido*, 503 U.S. __, 118 L. Ed. 2d 153, 169-70 (1992) (parties not limited to precise arguments made below).

The startling deviation of the Ninth Circuit on *Younger* abstention explains why the City attempts to drop the issue from the case and to enlist the aid of other

abstention doctrines. Opposition at 14 n.15. But these other doctrines were rejected by the District Court, Petition for Writ of Certiorari (Petition) at D-4, D-7, were not raised before the Ninth Circuit, *see* Brief of Appellees at 15-20, and should not now be resurrected. *See Adickes v. S. H. Kress and Co.*, 398 U.S. 144, 147 n.2 (1970) (this Court will not ordinarily consider issues not raised before the Court of Appeals).

Regardless of whether other abstention doctrines can be utilized when a federal plaintiff initiated the on-going state proceeding, only the Ninth Circuit applies *Younger* abstention in these circumstances and *Younger* is the only abstention doctrine at issue in this case. *See* Petition at A-6-10. The City has not been able to cite one case outside the Ninth Circuit to support the use of *Younger* abstention when the federal plaintiff initiated the state proceeding.[1] *See* Opposition at 15-17. This is a classic case of the dog that did not bark. Review by this Court is necessary to bring the Ninth Circuit into line with the rest of the federal courts.

---

[1] The City offers as its only example of "abstention in similar circumstances," Opposition at 15, a case that did not even involve *Younger* abstention and was in the special context of the "highly political task" of congressional redistricting, *Growe v. Emison*, 507 U.S. __, 122 L. Ed. 2d 388, 399 (1993). Our case involves rent control and property rights, not reapportionment and voting rights.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED SO THIS COURT CAN EXTEND THE REASONING OF ENGLAND BEYOND THE CONTEXT OF PULLMAN ABSTENTION

The petition demonstrates that the procedure created by this Court in *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964), should not be confined to cases involving *Pullman* abstention. Petition at 17-25; *see Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The need for such a procedure in property rights cases that are filed first in state court to satisfy the ripeness requirements of *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194-97 (1985), should become clear from the confusion that is at the root of the arguments raised in respondents' Brief in Opposition.

The City argues that an *England* reservation should not apply based on questions of timing. The state case was filed first, so the City reasons *England* cannot apply. Opposition at 18. The state complaint contained federal claims before the reservation was filed, so the City reasons *England* cannot apply. Opposition at 22. But since *Williamson County* requires that claims under the Just Compensation Clause of the United States Constitution be brought in state court first, under the City's approach, these claims bear the dubious distinction of being the only federal constitutional rights that cannot be litigated in federal court.

The City attempts to distinguish *Fields v. Sarasota Manatee Airport Authority*, 953 F.2d 1299, 1306 (11th Cir. 1992), Opposition at 21. The real distinction is that no express reservation of rights was made on the record in that case, resulting in the federal claims being extinguished, while Mission Oaks made such a reservation in the state proceeding

relevant to this case, before any rulings on the merits.[2] *Compare Fields*, 953 F.2d at 1309, *with* Petition at A-5, C-1-2. If the *Fields* approach is adopted by this Court, property owners in Mission Oaks' position will have a clear and unambiguous way to preserve their federal claims when first filing a state court action. Without such a mechanism, the confusion that resulted in the procedural posture of this case will continue.

The City concedes that *Williamson County* forced Mission Oaks to file its takings claim in state court, Opposition at 22, but does not seem to grasp why the federal due process and equal protection claims were initially filed in state court. *See* Opposition at 13 n.13. Mission Oaks has explained this, Petition at 5, 24, and respondent itself notes the law behind the reason, Opposition at 20 n.19: in California, claims that *could have* been brought are merged into or barred by a final decision in state court.

---

[2] The City mischaracterizes the state writ proceeding, claiming that federal issues were raised and that federal law was relied upon in that proceeding. *See* Opposition at 7 n.4, at 13-14. Federal issues were not litigated in that case. One Ninth Circuit case was cited, at most, as analogous authority, *see, e.g.*, Memorandum of Points and Authorities in Support of Motion for Issuance of Peremptory Writ at 17. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), was cited for the innocuous, general proposition that courts exist to protect property rights, and *Yee* for the difficulty of making facial challenges. Mission Oaks' Reply Brief before the Sixth District Court of Appeal at 12. The collateral estoppel effect of the final decision in the writ action, Opposition at 23 n.21, is a matter for the District Court to decide upon remand.

See Palomar Mobilehome Park Association v. City of San Marcos, 989 F.2d 362, 364-65 (9th Cir. 1993). Once *Williamson County* forces a party to file a takings claim in state court, the property owner has the choice between filing the rest of its federal claims in that case or filing them in a federal court with the risk that the state case will conclude first and extinguish the federal forum.

Under such circumstances, the choice to file the federal claims is hardly voluntary. These procedural problems will recur until *England*-type reservations are allowed to preserve federal claims in the context of Just Compensation Clause cases filed in state courts under *Williamson County*. This Court should grant certiorari to address this vital issue.

CONCLUSION

The Ninth Circuit alone among the Courts of Appeals applies *Younger* abstention when the federal plaintiff initiated the state proceeding. The Ninth Circuit resists the use of *England* reservations outside of the context of *Pullman* abstention. Other circuits have not been so rigid, and the Eleventh Circuit has prescribed the use of an *England*-type reservation for cases such as this one, in which *Williamson County* forces a just compensation claimant into state court.

Review by this Court is necessary to resolve these important issues and conflicts. For the reasons stated in the petition, and for the reasons stated above, it is respectfully requested that certiorari be granted.

DATED: December, 1993.

Respectfully submitted,

RONALD A. ZUMBRUN
*JAMES S. BURLING
VICTOR J. WOLSKI
*Counsel of Record
Pacific Legal Foundation
2700 Gateway Oaks Drive,
Suite 200
Sacramento, California 95833
Telephone: (916) 641-8888
Attorneys for Petitioner